

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. 41940

NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION, INC.--PETITION FOR
DECLARATORY ORDER

Decided: August 18, 1997

On October 4, 1996, the National Motor Freight Traffic Association, Inc. (NMFTA),¹ and the National Classification Committee (NCC)² (collectively petitioners) filed a petition on behalf of their member motor carriers for the issuance of a declaratory order, or in the alternative, a petition for relief from Rule 5 of Article V of the National Classification Committee Agreement (NCC Agreement).³ On October 18, 1996, petitioners filed a supplement to their petition. On April 1, 1997, petitioners filed a request (letter dated March 27, 1997) for the Board either to provide expeditious handling of their petition, or, in the alternative, to grant relief from Rule 5 of Article V for classification appeals 1054 and 1055. On April 23, 1997, petitioners filed another request (letter dated April 17, 1997) for an extension with respect to the disposition of subject 12 of NCC Docket 971 (NMFC item 188560). We will grant relief for the three extension requests, and we will deny the petition for a declaratory order and the petition for relief.

THE PETITION

Petitioners request that the Board find that NCC's new meeting schedule is in keeping with Rule 5(a) of Article V of the NCC Agreement, which requires that final disposition of a new or changed classification proposal be made by the 120th day after docketing.⁴ They argue that the new meeting schedule is a cost-saving measure and reduces the number of NCC meetings that consider appeals from 4 to 3 each year⁵ and the number of panel meetings that consider

¹ NMFTA is a nonprofit membership corporation. Its membership includes over 2,500 motor carriers of property.

² NCC is an autonomous standing committee of the NMFTA.

³ The NCC Agreement specifically provides in Article V:

Rule 5. Disposition of Proposals

(a) Final disposition of proposals for new or changed provisions in the Classification shall be made by the 120th day after docketing, except that in unusual circumstances such period may be extended, if, within the 120-day period, a petition requesting an extension of that period and setting forth supporting reasons is filed with the Interstate Commerce Commission.

⁴ This 120-day rule was imposed on the motor carrier rate bureaus by the Interstate Commerce Commission (ICC) in *Rate Bureau Investigation*, 349 I.C.C. 811 (1975) and 351 I.C.C. 437 (1976). This policy was codified by the Motor Carrier Act of 1980 as 49 U.S.C. 10706(b)(3)(B)(vii). While maintaining a motor carrier rate bureau section (49 U.S.C. 13703), the ICCTA did not reenact this provision. Accordingly, there is currently no statutory requirement for the 120-day rule.

⁵ The number of meetings the NCC is required to hold under Article 3, section 2 of its agreement is 3 per year. The NCC and its panels had been holding an increased number of meetings to guarantee that the 120-day statutory limitation on classification proposals always would be met.

initial proposals from 8 to 6.⁶ Petitioners state that the new meeting schedule may result in the deadline being missed occasionally. Therefore, they also request a finding that proposals that require more than 120 days to reach final disposition constitute "unusual circumstances" under Rule 5(a) of Article V and that no petition for extension of the deadline need be filed with the Board in such cases. Petitioners stress that they do not seek to amend the NCC Agreement in any way.

If we do not institute a declaratory order proceeding, petitioners ask, in the alternative, that we grant relief from the Rule 5(a) requirement that proposals must receive final disposition within 120 days of docketing.

In addition to these requests, petitioners also propose two possible alternatives. The first would authorize the NCC to implement a mail balloting procedure for votes on appeals that would otherwise exceed the 120-day deadline. The second alternative would allow unresolved classification proposals to lapse automatically upon reaching the 120-day deadline. In support of this alternative, petitioners state that many classification proposals are not appealed, but are simply resubmitted.

DISCUSSION AND CONCLUSIONS

NMFTA/NCC's petition for declaratory order will be denied. Under the Administrative Procedure Act, "[t]he agency, . . . in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty." 5 U.S.C. 554(e). Here, a declaratory order is not appropriate because there are other remedies that are preferable. *See Intercity Transp. Co. v. U.S.*, 737 F.2d 103, 108-09 (D.C. Cir. 1984). We are being asked, essentially, not to interpret Article V Rule 5(a), but to rewrite it. Petitioners request that their proposed meeting schedule be found to meet the requirements of Rule 5, and that any disposition requiring more than 120 days would be considered an "unusual circumstance." Although the 120-day deadline is no longer statutorily required, Rule 5(a) mandates that a petition with supporting reasons be filed within the 120-day period for there to be a finding of unusual circumstances. Given these clear requirements, petitioners should submit an amended agreement if they want to depart from the rule.⁷

We also find that petitioners' alternative requests, found in their "petition for relief," should be denied. We do not pass on the substance of these requests (waiving the 120-day period, mail balloting of appeals, or automatic expiration after 120 days). They do, however, appear to involve areas covered by the NCC agreement.⁸ Accordingly, we believe that if petitioners wish to effect any of the proposed changes, they should submit an amended agreement.⁹

⁶ Petitioners submit that they have advised representatives of the National Small Shipments Traffic Conference of the proposed schedule of 3 appeal hearings and 6 panel meetings, and that the representatives indicated that they would have no objection to this schedule.

⁷ Our denial of the petition is not based on any objections to the proposed meeting schedule. We are denying the petition because we do not believe that a declaratory order pronouncement is an appropriate way to supersede the plain language of the agreement.

⁸ *See Section 5a Application No. 61--National Classification Committee--Agreement* (ICC served May 18, 1987, and May 9, 1988). *See also* Article V, Rule 4 (Open Meetings), and Rule 7 (Appeals), as well as Rule 5(a).

⁹ Under 49 U.S.C. 13703(d), approval of agreements [under what is now 49 U.S.C. 13703(a)] shall expire three years after the date of approval, which is December 31, 1995, for agreements approved by the ICC under former 49 U.S.C. 10706(b). Accordingly, in order to continue in existence, all rate bureaus will be required to obtain new approvals by December 31, 1998.

We will, however, grant petitioners a 60-day extension for the three extension requests they have filed. With respect to future extensions, until an amended agreement is approved by the Board, NCC must comply with Rule 5 of Article V of its agreement.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition is denied.
2. Petitioners are granted a 60-day extension of time for their three extension requests.
3. This decision is effective on the date of service.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams
Secretary